FOO SEW SIAH

v.

GOVERNMENT OF MALAYSIA

HIGH COURT MALAYA, SEREMBAN
MUSTAPHA HUSSAIN J
[CIVIL SUIT NO. PF 54 OF 1984]
5 DECEMBER 1986

ADMINISTRATIVE LAW: *Retirement from government service - Executive officer in Telecoms department - Plaintiff suffering from mental ailment known as "Paranoid Schizophrenia" - Early retirement - Medically boarded out - Section 10(5)(a) Pensions Act 1980 - Medical Board convened at request of head of department - Long standing departmental quarrel between plaintiff and head of department - Question of bias - Whether board formal and lawfully convened - Notice of hearing - Whether plaintiff given notice and findings of board - Medical board convened to decide whether plaintiff fit for continued service - Board presided over by doctor who treated plaintiff and had indepth knowledge of plaintiff's illness and history - Question of unconscious likelihood of bias - Whether composition and deliberation of Medical board biased - Finding and recommendation of board null and void.*

The plaintiff who was the executive officer of the Telecommunications Department, Seremban, in charge of administration but under the supervision of her head of department Mr. Chua Chin Leong was retired from government service on 24 May 1984 with effect from 1 June 1984 under s. 10(5)(a) of the Pensions Act 1980 on the recommendation of the Medical Board that she be boarded out of service on medical grounds.

The plaintiff filed this suit alleging that:

(i) her retirement was irregular and unlawful on the ground that no formal or any medical board was ever convened; no notice was given to her nor was she made aware of it being convened:

(ii) the request made by her head of department Mr. Chua for the convening of the Medical Board was not lawful and was biased;

(iii) the Psychiatrist who was treating her namely, Dr. Shirley George who presided over the Medical Board may well have formed an adverse opinion and could have been biased.

Consequently, the plaintiff sought a declaration that she was wrongly retired from service and that she is still in continued employment of the defendant.

The issues for determination before the Court were:

(i) whether the Medical Board convened on 1 November 1982 at the request of Mr. Chua Chin Leong, the Controller of Telecommunications, was lawfully convened;

(ii) whether the plaintiff was given the right of hearing, i.e. if she was informed of the convening of the Medical Board and was supplied with the findings of the Board; and

(iii) whether Dr. Shirley George, who was treating the plaintiff since 1980 and who presided over the Medical Board, could have been biased.

Held:

[1] The Court was satisfied that there had been no irregularity in the request for the convening of the Medical Board by Mr. Chua Chin Leong the Head of Department as there was no evidence to show that he had influenced by his bias of or even animosity towards the plaintiff, the findings of the Medical Board.

[2] The plaintiff was not denied the right to be heard as the evidence of Mr. Chua Chin Leong, the Head of Department showed that the plaintiff was informed verbally of the convening of the Medical Board and that the findings of the Medical Board were made known to her and there was no evidence to the contrary.

[3] Although there was no evidence that Dr. Shirley George was actually biased but with her indepth knowledge of her patient the plaintiff, it cannot be said that there was no real albeit unconscious likelihood of bias. Therefore, the composition and deliberation of the Medical Board were biased.

[4] In the circumstances the finding and recommendation of the Medical Board was null and void and of no effect and therefore the plaintiff was not rightly retired.

[Judgment for plaintiff with costs.]

Cases referred to:

R. v. Kent Police Authority & Ors., Ex Parte Godden [1971] 3 WLR 416
Metropolitan Properties' case [1968] 3 All ER 309

Legislation referred to:

Pensions Act 1980, s. 10(5)(a)

For the plaintiff - N. Ramachandran; M/s. N. Ramachandran & Co.
For the defendant - Suraya binti Othman, FC

JUDGMENT

Mustapha Hussain J:

The plaintiff herein Miss Foo Sew Siah, was appointed a General Executive Officer on 1 July 1975 and confirmed in her appointment on 2 August 1977. At the material time of her being medically boarded out of the service, she was the Executive Officer of the Telecommunications Department, Seremban, in charge of administration but under the supervision of her Head of Department Mr. Chua Chin Leong. Previous to her transfer to the Telecommunications Department, Seremban, she was the Executive Officer in the Metereological Department at Petaling Jaya.

The plaintiff was born on 2 September 1946 and she was 35 years old when she was transferred to Telecommunications Department, Seremban. She is not married and still single at the time of hearing of this suit.

The plaintiff was and is still suffering from some mental ailment known as Paranoid Schizophrenia. She has a history of queer behaviour even when she was in the Metereological Department in Petaling Jaya. In the Telecommunications Department, Seremban, she could not get along with the other staff and there were long running complaints both from her and from her colleagues in the office. There were allegations of hearing voices, complaints of being charmed and having radio waves and her behaviour was irrational. While in Seremban she was being medically treated by the Consultant Psychiatrist of the Psychiatric Unit of General Hospital, Seremban, Dr. Shirley George, starting from 24 December 1980. She had

also been examined earlier by previous psychiatrist. The whole sad episode culminated in her Head of Department Mr. Chua Chin Leong requiring her to appear before a Medical Board, with Dr. Shirley George presiding over such Board. The Medical Board recommended that the plaintiff be boarded out of service on medical grounds and on 24 May 1984 she was retired from government service with effect from 1 June 1984 under s. 10(5)(a) of the Pensions Act 1980.

The plaintiff Miss Foo Sew Siah filed this writ alleging that her retirement was irregular and unlawful on the ground that no formal or any medical board was ever convened; that no notice was given to her nor was she made aware of it being convened. She also alleged that the request made by her Head of Department Mr. Chua for the convening of the Medical Board was not lawful and was biased. She alleged further that the psychiatrist who was treating her, namely, Dr. Shirley George, who presided over the Medical Board may well have formed an adverse opinion and could have been biased.

The plaintiff therefore prays for a declaration that she was wrongly retired from service and that she is still in continued employment of the defendant.

The defendant on the other hand denied the allegations of the plaintiff and stated in their defence that the Medical Board was convened at the express request of the Controller of Telecommunications, Negeri Sembilan, to determine whether the plaintiff was medically fit to carry out her duties and that the Board was presided over by Dr. Shirley George.

The issues for determination before the Court are:

(1) whether the Medical Board convened on 1 November 1982 at the request of Mr. Chua Chin Leong, the Controller of Telecommunications, was lawfully convened;

(2) whether the plaintiff was given the right of hearing, i.e. whether she was informed of the convening of the Medical Board and whether she was supplied with the findings of the Board; and

(3) whether Dr. Shirley George, who was treating the plaintiff since 1980, and who presided over the Medical Board, could have been biased.

At the hearing the plaintiff was not called to give evidence at all. She was and is still suffering from Paranoid Schizophrenia and one cannot expect her to give evidence coherently on her own behalf. At the outset of the hearing, her Counsel had indicated that the plaintiff would rely and rest her case solely on the question of law i.e. on the issues enumerated above.

I shall now proceed to discuss the issues before the Court.

(1) ***Whether the Medical Board was lawfully constituted:***

Mr. Chua Chin Leong gave evidence and he stated that he was the Controller of Telecommunications, Negeri Sembilan in Seremban and the plaintiff was working under his supervision. Clearly Mr. Chua is the Head of Department, (see definition in O. 1(iv) of Cap. C of General Orders), as far as the Telecommunications Department in Seremban and Negeri Sembilan is concerned.

Can Mr. Chua, the Head of Department, request for a medical board on an officer subordinate to him? Order 19 of Chapter F gives an instance under para. (iv) "when the sanity or the physical fitness of an officer is in doubt" a Medical Board can be convened on the request of the Head of Department (see O. 18 of Chapter F). To give an illustration, if the chief clerk

of a department had been behaving like a raving maniac and accuses his Head of Department to be the great satan tormenting him, surely the Head of Department need not wait for the raving maniac to take and complete his 45 days' of medical leave under O. 18 of Chapter C. Nor could it be said that the Head of Department is biased just because he had been termed as the satan and tormentor.

Though Mr. Chua is not qualified to say whether the plaintiff is insane or mentally ill or not, there is enough evidence for Mr. Chua, the Head of Department to "doubt the sanity" of the plaintiff.

The fact that Mr. Chua, the Head of Department had a long standing departmental quarrel or misunderstanding with the plaintiff and could have been biased, does not affect his request for the convening of the Medical Board, unless there is evidence to show that Mr. Chua had influenced by his bias of or even animosity towards the plaintiff, the findings of the Medical Board. The Court is satisfied that there has been no irregularity in the request for a Medical Board.

(2) ***The right to be heard:***

Evidence of Mr. Chua shows that plaintiff was informed verbally of the convening of the Medical Board and that the findings of the Medical Board were made known to her. In the absence of any evidence to the contrary, the Court is of the view that the plaintiff was not denied the right to be heard.

(3) ***Bias of Dr. Shirley George presiding at the Medical Board***

Firstly, the convening of the Medical Board. Dr. Boey, the then Consultant Anaesthetist of General Hospital, Seremban, who was acting as the Superintendent of the General Hospital, received the letter from the Director of Medical Services to convene the Board. I am satisfied that there is nothing irregular in the convening of the Board - under the chain of command (so to speak), Dr. Boey was merely transmitting the directive of the Director of Medical Services. The Director of Medical Services has to write to someone who is in charge of the General Hospital and it so happened that Dr. Boey was the Acting Superintendent.

Dr. Shirley George, the Consultant Psychiatrist, has been treating the plaintiff for her mental illness since 1980. Dr. Shirley George, more than anybody else, knows about the mental illness and its extent *vis-a-vis* plaintiff's medical fitness and had diagnosed the plaintiff to be suffering from Paranoid Schizophrenia. Dr. Shirley George very well knew of the plaintiff's condition, and whether she is fit or unfit for service.

The Medical Board that was constituted was to decide on whether the plaintiff was fit or unfit for continued service in government. Its decision could lead and indeed had led to the compulsory retirement of the plaintiff. In the words of Lord Denning in *R. v. Kent Police Authority & Ors., Ex Parte Godden* [1971] 3 WLR 416, the Board was clothed with a judicial character and therefore must conform to natural justice. Some other doctor, not familiar with or who does not know the plaintiff and the plaintiff's history of mental illness, should preside over the Medical Board with another doctor or a member who is similarly unconversant with the plaintiff's mental state. The Board then should listen to what Dr. Shirley George has to say and the plaintiff too should be given an opportunity of what she has to say. Only then the Board should come to its decision after weighing the pros and cons.

As it were, Dr. Shirley George presided over the Board and also called another doctor Dr. Bharathi Singham to sit as a member, and as the evidence goes, to fill up the number so to speak.

Dr. Shirley George may not entertain any ill-feeling towards the plaintiff. In fact there is evidence to show that Dr. Shirley George was very sympathetic to the plaintiff and had always helped her medically. Dr. Shirley George all along knew the plaintiff was mentally ill. The whole process of Dr. Shirley George being appointed to preside over the Medical Board with Dr. Singham sitting as a member just to comply with the formality of constituting the Board smacks of a hasty getting through the mere formality of convening a Medical Board to pension off the plaintiff. It would seem that we have here a situation where Dr. Shirley George was not only playing the role of a judge (as presiding officer making a decision), she was also the prosecutor (who tells the Board i.e. to herself that the plaintiff is unfit to continue in Government service due to Paranoid Schizophrenia) and the executioner (when she recommended that the plaintiff be pensioned off). The Medical Board as constituted cannot, by any stretch of imagination, be said to be judicial or quasi judicial body adhering to all rules of natural justice. At best, the whole set-up of the Medical Board was merely perfunctory.

Had another doctor, say a psychiatrist from another State presided over the Medical Board, even with Dr. Bharathi Singham as a member, after considering the report of Dr. Shirley George, the Board may have come to a different finding, for the simple reason that a person suffering from Schizophrenia can do work during lucid periods. After all there are many people with split personality running around in this world, some in high places.

Dr. Shirley George may be highly qualified. She was not actually biased (as the evidence goes) but with her indepth knowledge of her patient the plaintiff, it cannot be said that there was no real albeit unconscious likelihood of bias. To quote Lord Denning in *Metropolitan Properties case* [1968] 3 All ER 309 where Lord Denning re-emphasised Lord Hewart's often quoted phrase that "justice not only be done but be manifestly seen to be done".

On this point the Court is therefore of the view the composition and deliberation of the Medical Board were biased. It follows therefore that the finding and recommendation of the Board are null and void and of no effect. And as such this Court holds that the plaintiff herein was not rightly retired.

Judgment for the plaintiff in terms of prayer 4 and costs.

Also found at [1988] 1 CLJ 171